Filed 10/13/09 In re S.E. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S.E., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. S.E., Defendant and Appellant.	D054693 (Super. Ct. No. J516030B)

APPEAL from a judgment of the Superior Court of San Diego County, Yvonne E. Campos, Judge. Dismissed.

S. E., a minor, appeals from a judgment of the juvenile court finding that the sibling relationship exception to termination of parental rights under Welfare and

Institutions Code[1] section 366.26 is applicable. We dismiss the appeal as duplicative of an earlier appeal. (See *In re S.E.* (Aug. 11, 2009, D054255) [nonpub. opn.].)

FACTUAL AND PROCEDURAL BACKGROUND[2]

On August 11, 2009, this court filed an opinion in the case *In re S.E., supra,* D054255 (SE-I). Both SE-I and the instant case involve the same minor and the same issue.

In SE-I, the minor argued that the trial court lacked sufficient evidence to find that the sibling relationship exception set forth in section 366.26, subdivision (c)(1)(B)(v) applied. This court affirmed the judgment.

This court then initiated review of the instant case. The articulated facts and arguments in S.E.'s opening brief in this case were virtually identical to those in the opening brief filed in SE-I. Specifically, S.E. raised the same issue—that the court lacked sufficient evidence to find that the sibling relationship exception set forth in section 366.26, subdivision (c)(1)(B)(v) applied to prevent the termination of parental rights.

This court requested supplemental briefing from the parties addressing why this court should not dismiss the instant case as duplicative of SE-I. On August 24, 2009,

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1 All statutory references are to the Welfare and Institutions Code unless otherwise specified.

2 Our unpublished opinion in S.E.'s prior appeal (*In re S.E., supra,* D054255) of which we take judicial notice, contains a detailed account of the facts and procedure. We will not recite those facts again here.

counsel for both the San Diego County Health and Human Services Agency (the Agency) and S.E. filed supplemental briefs. After reviewing the opinion filed in SE-I, the briefs in the instant case and the supplemental briefs, we dismiss the instant case.

DISCUSSION

S.E. argues that the instant case should not be dismissed as duplicative of SE-I because the instant case contains new facts that were not before this court in SE-I. Specifically, S.E. asserts that the juvenile court held a hearing in March 2009 in which new evidence that was not included in the record of SE-I was introduced.

The Agency disagrees, and maintains that the facts before this court in the instant appeal are the same facts that were before the court in SE-I. The Agency notes that, at the March 2009 hearing, the juvenile court's focus was to select a permanent plan for S.E. and that the court did not revisit the sibling relationship exception that it had found applicable at the earlier hearing. Therefore, the Agency contends, the record from the March 2009 hearing does not contain additional facts relating to the application of this exception. We agree with the Agency's contentions.

A. Background and Analysis

In December 2008, the juvenile court held an initial section 366.26 hearing. After hearing argument from all parties, the court found that the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v) applied to preclude the adoption of S.E. The court then continued the section 366.26 hearing to a later date. The purpose of the continuance was to provide all counsel with additional time to address the selection of a

permanent plan for S.E. Following the conclusion of the December 2008 hearing, S.E. appealed the court's finding that the sibling relationship exception applied.

In March 2009, the juvenile court concluded the section 366.26 hearing and terminated jurisdiction over S.E. At that hearing, the court selected legal guardianship as the permanent plan for S.E. S.E. filed a notice of appeal from the judgment rendered at the March hearing.

In her supplemental brief, S.E. claims that new information presented at the March 2009 hearing supports her argument that there is not substantial evidence to support the juvenile court's finding that the sibling relationship exception applies in this case. S.E. cites to information to the effect that the great-uncle, who adopted S.E.'s sibling, did not visit S.E. in the two months leading up to the March hearing. S.E. contends that the lack of visitation between S.E., her great-uncle and her sibling constitutes further evidence showing that termination of parental rights would not substantially interfere with the relationship S.E. has with her sibling.

We do not find this argument to be persuasive. The juvenile court's finding that the sibling relationship exception applies was not addressed at the March hearing. The court had already made that determination in December 2008. The sole purpose of the March hearing was to address the selection of a permanent plan for S.E. The court did not receive any new information or hear any argument concerning the sibling relationship exception. Further, by the time this court issued its opinion in SE-I, this court was aware that a hearing had taken place in March 2009, to select a permanent plan for S.E. This court took judicial notice of the minute order from that hearing, at the request of minor's

counsel, and noted this in SE-I. (See *In re S.E., supra,* D054255, fn. 1.) Minor's counsel did not raise her current argument concerning the March hearing at the time she requested that this court take judicial notice of the proceedings at that hearing.[3]

S.E.'s counsel argues that if parental rights are terminated, the great-uncle would adopt S.E. and S.E. could live with her sibling. S.E.'s counsel is apparently under the misimpression that adoption would definitely take place if parental rights were terminated, and that the great-uncle would be the person to adopt S.E. Although it is possible that the great-uncle might adopt S.E. if parental rights were terminated, this is not a certainty. While the social workers argued for placement of S.E. with the great-uncle, both the Court Appointed Special Advocate (CASA) and the therapist strongly advocated against placing S.E. with anyone other than her current caretaker—who is not the great-uncle—because of the detriment that S.E. would suffer as a result of any change in placement. These differences in opinions suggest that it is unclear, at best, with whom S.E. would be placed if parental rights were terminated.

If this court were to reach the merits in this instant appeal, we would be allowing minor's counsel the proverbial second bite at the apple. "[T]here cannot be two appeals from the same judgment and . . . where the appellant has perfected a valid appeal from a judgment such appeal vests the appellate court with jurisdiction of the case, and . . . any proceedings thereafter taken by appellant to take a separate or second appeal from said

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3 In addition, it was S.E.'s counsel who urged this court to reach the merits of SE-I even though counsel had appealed from the findings made at the December 2008 hearing and not from the March 2009 judgment. (See *In re S.E.*, *supra*, D054255, fn. 3.)

judgment are ineffectual for any purpose." (*Keaton v. Municipal Court* (1930) 209 Cal. 52, 53.) There is no basis for this court to consider a second, identical appeal on behalf of S.E. (See *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.)

DISPOSITION

The appeal is dismissed.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.